

MAINE STATE LEGISLATURE

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132nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2026

Legislative Document

No. 2143

S.P. 861

In Senate, January 7, 2026

An Act Facilitating the Reconstruction or Replacement of Storm-damaged Commercial Fisheries Facilities and Infrastructure

(EMERGENCY)

Submitted by the Maine Office of Community Affairs pursuant to Joint Rule 203.
Reference to the Committee on Housing and Economic Development suggested and
ordered printed.

Darek M. Grant

DAREK M. GRANT
Secretary of the Senate

Presented by President DAUGHTRY of Cumberland.
Cosponsored by Representative: GOLEK of Harpswell.

1 **Emergency preamble.** **Whereas**, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas**, as a result of severe storms and flooding, individuals and business owners
4 in the State have suffered substantial damage to facilities and infrastructure such as docks,
5 piers, wharves, fish houses and other structures traditionally used in support of commercial
6 fishery operations and other functionally dependent uses; and

7 **Whereas**, severe storms and flooding are likely to recur with climate change and
8 rising sea levels; and

9 **Whereas**, under certain federal, state and local laws, to lawfully reconstruct or replace
10 such damaged facilities and infrastructure, a municipal board of appeals must grant a
11 variance from local floodplain management ordinance provisions by finding, among other
12 things, that the land in question cannot yield a reasonable return unless the variance is
13 granted; and

14 **Whereas**, because Maine courts have repeatedly held that mere access to coastal
15 waters and the recreational benefits afforded by that access provide property owners with
16 a reasonable return on their land, individuals and business owners seeking a variance are
17 unlikely to be able to demonstrate a lack of a reasonable return on their land and would
18 therefore be unable to reconstruct or replace damaged facilities and infrastructure; and

19 **Whereas**, statutory changes are needed to allow boards of appeals authority to grant
20 variances to allow individuals and business owners to make necessary repairs to structures
21 for a functionally dependent use and to clarify the definition of a functionally dependent
22 use in this context; and

23 **Whereas**, in the judgment of the Legislature, these facts create an emergency within
24 the meaning of the Constitution of Maine and require the following legislation as
25 immediately necessary for the preservation of the public peace, health and safety; now,
26 therefore,

27 **Be it enacted by the People of the State of Maine as follows:**

28 **Sec. 1. 30-A MRSA §4353, sub-§4**, as amended by PL 2013, c. 186, §1, is further
29 amended to read:

30 **4. Variance.** Except as provided in subsections 4-A, 4-B and 4-C and section 4353-A,
31 the board may grant a variance only when strict application of the ordinance to the
32 petitioner and the petitioner's property would cause undue hardship. The term "undue
33 hardship" as used in this subsection means:

34 A. The Except as provided in subsection 4-D, the land in question can not ~~can not~~ cannot yield
35 a reasonable return unless a variance is granted;

36 B. The need for a variance is due to the unique circumstances of the property and not
37 to the general conditions in the neighborhood;

38 C. The granting of a variance will not alter the essential character of the locality; and

39 D. The hardship is not the result of action taken by the applicant ~~petitioner~~ or a prior
40 owner.

1 Under its home rule authority, a municipality may, in a zoning ordinance, adopt additional
2 limitations on the granting of a variance, including, but not limited to, a provision that a
3 variance may be granted only for a use permitted in a particular zone.

4 **Sec. 2. 30-A MRSA §4353, sub-§4-D** is enacted to read:

5 **4-D. Floodplain reasonable return variance for functionally dependent use.** The
6 board may grant a variance from a prohibition on construction seaward of mean high tide
7 or requirement to elevate structures above the base flood elevation when placed upon a
8 dock, pier or wharf as prescribed in a municipal floodplain management ordinance that is
9 filed with the municipality's board of appeals if:

10 A. The petitioner demonstrates to the board that the petitioner suffered substantial
11 damage, as defined in the municipality's floodplain management ordinance, to a dock,
12 pier or wharf or a structure placed thereon;

13 B. The damaged dock, pier or wharf or structure placed thereon identified pursuant to
14 paragraph A is proposed to be reconstructed or replaced and be permitted for a
15 functionally dependent use as defined in 44 Code of Federal Regulations, Section 59.1;
16 and

17 C. The dock, pier or wharf or structure placed thereon under paragraph B is proposed
18 to be elevated or otherwise protected from flood damages to the extent practicable.

19 A variance granted pursuant to this subsection must be the minimum variance from the
20 municipal floodplain management ordinance necessary to afford relief for the functionally
21 dependent use.

22 **Sec. 3. 30-A MRSA §4364-A, sub-§5, ¶C**, as enacted by PL 2021, c. 672, §5, is
23 amended to read:

24 C. Establish alternative criteria that are less restrictive than the requirements of
25 subsection 4 for the approval of a housing structure only in circumstances in which the
26 municipality would be able to provide a variance under section 4353, subsection 4,
27 4-A, 4-B or, 4-C or 4-D.

28 **Sec. 4. 30-A MRSA §4364-B, sub-§8, ¶C**, as enacted by PL 2021, c. 672, §6, is
29 amended to read:

30 C. Establish alternative criteria that are less restrictive than the requirements of
31 subsections 4, 5, 6 and 7 for the approval of an accessory dwelling unit only in
32 circumstances in which the municipality would be able to provide a variance under
33 section 4353, subsection 4, 4-A, 4-B or, 4-C or 4-D.

34 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
35 takes effect when approved.

36 SUMMARY

37 This bill amends the provisions of law governing a municipal board of appeals'
38 authority to issue variances to local ordinances. The bill provides that a petitioner seeking
39 a variance from a municipal ordinance to make repairs to the person's dock, pier or wharf
40 or structure thereon does not have to meet the requirement that the person's land cannot
41 yield a reasonable return unless the variance is granted, as long as the dock, pier or wharf

1 or structure thereon sustained substantial damage and is to be reconstructed or replaced for
2 a functionally dependent use as defined in 44 Code of Federal Regulations, Section 59.1.